IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02-11-2007

CORAM :

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

W.P. Nos. 27186 to 27190, 27195 to 27199, 27202, 27232, 27426, 27456, 28280, 27334, 27355, 27389, 26927 & 26928 of 2007

and

M.P. Nos. 1 to 1, 2 of 2007

Venu	.. Petitioner in W.P.27186/07
K. Perumal	.. Petitioner in W.P.27187/07
R. Palani	.. Petitioner in W.P.27188/07
K. Chandra	.. Petitioner in W.P.27189/07
Udayakumari	.. Petitioner in W.P.27190/07
Chandra	.. Petitioner in W.P.27195/07
C. Subramani	.. Petitioner in W.P.27196/07
R. Krishnan	.. Petitioner in W.P.27197/07
Malar	.. Petitioner in W.P.27198/07
K. Kuppusamy	.. Petitioner in W.P.27199/07
M. Karivaradhan	.. Petitioner in W.P.27202/07
M. Subramani	.. Petitioner in W.P.27232/07
S. Mariappan	.. Petitioner in W.P.27426/07
Fathima Beevi	.. Petitioner in W.P.27456/07
P.V. Suresh	.. Petitioner in W.P.27280/07
C.S. Sowmini	.. Petitioner in W.P.27334/07
D. Bhuvaneswari	.. Petitioner in W.P.27355/07
N. Ranganathan	.. Petitioner in W.P.27389/07
C. Malliga	.. Petitioner in W.P.26927/07
M.S. Chandra Sekar	.. Petitioner in W.P.26928/07

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Versus

1. The Chairman
   Tamil Nadu Housing Board
   Nandanam
   Chennai - 600 035

2. The Executive Engineer
   Anna Nagar Division
   Tamil Nadu Housing Board
   Chennai - 600 040 .. Respondents in all Writ Petitions

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Petitions filed under Article 226 of The Constitution of India praying a Writ of Mandamus forbearing the respondents from interfering with the petitioner's peaceful possession and enjoyment of all the house, ground and premises bearing Door Nos.551/42, 551/45B, 551/36, 551/39, 551/40, 551/45, 551/36-A, 551/36B, 551/39, 551/45A, 551/41, 551/36-A comprised in Block No.5, T.S. No.1 part, Muthumariamman Koil Street, No.106, Arumbakkam Village, Egmore Nungambakkam Taluk, Chennai District, in any manner inclusive of dispossession by including any demolition either by themselves, their workmen, agents, representatives and assigns etc., (W.P.Nos.27186 to 27190/07, 27195 to 27199/07, 27202 and 27426/07)

W.P.27232/07

Petitions filed under Article 226 of the Constitution of India praying for a Writ of Mandamus forbearing the respondents from interfering with the petitioners peaceful possession and enjoyment of all the house groundand premises bearing Door No. 551/36B, Muthumariamman koil street, no. 1065, Arumbakkam, villge, Egmore, nungambakkam, taluk Chennai district in any manner inclusive of dispossession by kndulging in demolition either by themselves, their workmen agents representatives and assigns etc.,

W.P.27456/07:Petitions filed under Article 226 of The Constitution of India praying for a Writ of Mandamus forbearing the respondents from interfering with the petitioners peaceful possession and enjoyment of all the house, ground and premises bearing D.No.551/38, comprised in Block No.5, T.S.No.1 Part, Muthumariamman Koil St, No.106, Arumbakkam Village, Egmore Nungambakkam Taluk, Chennai Dist, in all measuring 1740 sq.ft. in any manner inclusive of dispossession by indulging in demolition either by themselves, their workmen agents representatives and assigns etc.,

W.P.28280 /07: Petitions filed under Article 226 of The Constitution of India praying for a Writ of Mandamus calling for the records relating to the Letter No.AND/survey/92/75 dated 4.8.2007 of the 2nd respondent herein and quash the same and consequently direct the respondents to allow the portion of land which is in occupation of the petitioner in Door No.551/33, EVR Road, Poonamallee High Road, Arumbakkam, Chennai-106 in favour of the petitioner on receipt of Market value of the land.

W.P.No.27334/07 and 27355/07 and 27389/07:- Petitions filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the respondent to dispose of the petitioners representation dt on 30.1.2007 forthwith to issue allotment of the petitioner premises situate at No.551/31, 551/31A and 551/32 P.H. Road, Arumbakkam, Chennai 106.

W.P.26927/07 and 26928/07:- Petitions filed under Article 226 of The Constitution of India praying for a Writ of Mandamus calling for the records relating to the Letter No. ANK/Survey /92/75 dated

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04.08.2007 of the 2nd respondent herein and quash the same and consequently direct the Respondents to allow the portion of land which is in occupation od the petitioner in door No. 551/27/1C, and 551/27/1A EVR Road, Poonamallee High road, Arumbakkam, Chenani -106 in favour of the petitioner on receipt of Market value of the land .

For Petitioner : Mr.S. Rajendran (in W.P.No.28280/07)
For Petitioner : Mr. D. Ashok Kumar (in Writ Petitions W.P.27186 to 27190/07, W.P.27195 to 27199/07, 27202, 27232, 27426 and 27456/07

For Petitioner : Mr.J.R. Edwin in W.P.Nos.27334 and 27355 and 27389/07
For Petitioner : Mr.S. Parthasarathy in W.P.Nos.26927 and 26928/07

For Respondents in all Wps. : Mr. P.S. Raman
Additional Advocate General
assisted by Mr. R. Girirajan
(in all Wps)

COMMON ORDER

The case of the petitioners is as follows:-

The petitioners are owners of the land and superstructure wherein they are residing/carrying on business for a long period. The respondents surprisingly issued/affixed notices near their lands, after perusal of copy of the notices issued to similarly placed persons they came to know that it is alleged that the petitioners encroached the property of the respondents and they were called upon to handover possession within the stipulated short period. The said notices are illegal and without jurisdiction. Under Section 84 of the Tamil Nadu Housing Board Act, power is vested with the housing board to evict certain persons mentioned in 84 (1) (a) (i) (ii) and (iii) (d) but the petitioners does not come under the purview of Section 84 (1) (a) of the Act, hence, the said notices are untenable. Before resorting to eviction, the mandatory provisions of Section 84 (2) of the said Act has not been complied with by the respondents by issuing notice under Section 84 (1) of the Act. In some cases, notices were not issued by the respondents, but the petitioners were threatened for eviction, hence, they are seeking for Mandamus forbearing the respondents from interfering with the petitioners peaceful possession and enjoyment of all the house, ground and premises in any manner inclusive of dispossession by including any demolition either by themselves, their workmen, agents, representatives and assigns etc., The petitioners have spent substantial amount for putting up superstructure, however, without prejudice to their right, they are ready and willing to purchase the lands, which is in their occupation, at the prevailing market rate and prayed for quashing of the impugned notices and allow the writ petitions.

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2. The case of the respondents is as follows:-

The lands in Old Survey Nos. 249/1 to 6, 250/1 to 8, 251 and 252/2A in T.S. No.2, Block No.4, Arumbakkam Village, Egmore-Nungambakkam Taluk, which is wrongly mentioned by the petitioners in their respective affidavits, were acquired by the acquisition body following Land Acquisition Act. The Tamil Nadu Housing Board, hereinafter referred to as Board had invested huge public money for acquiring the same in order to utilise the said lands for suitable housing scheme for residential and commercial purpose. The Board is a statutory body and its main object is to develop the lands and implement the housing scheme for the people belonging to economically weaker sections (EWS), lower income group (LIG), middle income group (MIG) and higher income group (HIG). In order to implement and develop housing schemes, the Tamil Nadu Housing Board has obtained financial assistance from World Bank, HUDCO and other financial institutions. The Housing Board has to allot houses or house site through lot. The petitioners are unauthorised encroachers of the lands of the housing board. Due to the encroachment by the petitioners, the Board is not in a position to implement the schemes in time, as a result, it incurred great financial loss and hardship, which ultimately defeats the main object of the Board. Some of the encroachers were evicted on 26.05.2007. Some of the petitioners vendors suppressing the real fact that the lands belonged to the Board clandestinely executed sale deeds. There is no necessity to issue notices under Section 84 of the Tamil Nadu Housing Board Act, however, formal notices were issued and affixed in the sites in the locality and the respondents are empowered to issue such notices to the encroachers. Some of the petitioners have suppressed the fact that notices were issued and served to them in their affidavit filed in support of the writ petitions. The petitioners and their vendors if any are land grabbers and knowing well that the lands belonged to the Board, false sale deeds were executed and the lands were occupied by the petitioners. Some of the petitioners and their vendors or their predecessors have filed similar cases which were dismissed, the details of the same are furnished below. The possession of the petitioners are unlawful and there cannot be any injunction or other similar relief be granted against the housing board, who is the true owner and prayed for dismissal of the writ petitions.

3. The learned counsel appearing for both sides reiterated the contents of their pleadings and their arguments were considered and material records were perused. The petitioners have stated that the petition mentioned properties are comprised in T.S. No. 1 part, which is not supported by any valid evidence. According to the respondents, the petition mentioned properties are comprised in Old Survey Nos. 249/1 to 6, 250/1 to 8, 251 and 252/2A in T.S. No.2, Block No.4, Arumbakkam Village, Egmore-Nungambakkam Taluk, which are acquired for the West Madras Neighbourhood Scheme (Anna Nagar Scheme) by the respondents by invoking the provisions of Land Acquisition Act, 1894 and award No.14 of 1966 and 15 of 1966 dated 28.03.1966 were passed, later, the said lands were handed over to the Board

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4. The petitioners in WP Nos. 27186 of 2007, 27196, 27232, 27355, 26927 and 26928 of 2007 or their predecessor had already filed writ petitions before this Court either challenging the acquisition proceedings or consequential eviction proceedings initiated by the respondents, which were dismissed and the details of the same are mentioned below, which are not disputed by the respective petitioners.

WP No.	Name of the petitioner	Previous Writ Petition/ Appeal	Writ Petition/appeal dismissed on
27186/07	N. Venu	WP 20325/1998	26.03.1999
27196/07	C. Subramani	WP 19754/1998	26.03.1999
27232/07	M. Subramani	WP 19751/1998	26.03.1999
27334/07	D. Bhuvaneswari	WP 8040/2002	22.03.2002
26928/07	C. Malliga	WP 26929/1998 WA 508/1999	15.03.1999 25.07.2000
26927/07	M.S. Chandra Sekar	WP 18535/98 WA 508/99	15.03.1999 25.07.2000

5. In view of the admitted position that the earlier litigations were dismissed, seeking the very same relief the present writ petitions are filed by the above said petitioners, hence, they are liable to be dismissed.

6. It is alleged by the petitioners in WP Nos. 27187 of 2007, 27188, 27189, 27190, 27195, 27197, 27198, 27199, 27202, 27426, 27456, 28280, 27334 and 27839 of 2007 that they have not filed any earlier writ petitions or suits and first time these writ petitions are filed, which cannot even be entertained for the reasons mentioned below.

7. The petitioners alleged that the possession of the acquired lands are with them for a long period, hence, they cannot be evicted without due process of law. The possession of the acquired lands could be taken only by way of Memorandum or Panchanama or Mahazar or any other name or nomenclature which is legally accepted norm. It would not be possible for the acquisition body or the requisition body to take physical possession of the land immediately, in such event, subsequent continuation of possession, if any, had by the erstwhile owner or the occupier is only illegal or unlawful possession which does not bind either the acquisition body or the requisition body. In this context, it would be relevant to refer to the decision of the Honourable Supreme Court reported in

i) (State of T.N. vs. Mahalakshmi Ammal, (1996) 7 SCC 269 wherein in Para No.9, the Honourable Supreme Court held thus:

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" 9. It is well-settled law that publication of the declaration under Section 6 gives conclusiveness to public purpose. Award was made on 26-9-1986 and for Survey No. 2/11 award was made on 31-8-1990. Possession having already been undertaken on 24-11-1981, it stands vested in the State under Section 16 of the Act free from all encumbrances and thereby the Government acquired absolute title to the land. The initial award having been made within two years under Section 11 of the Act, the fact that subsequent award was made on 31-8-1990 does not render the initial award invalid. It is also to be seen that there is stay of dispossession. Once there is stay of dispossession, all further proceedings necessarily could not be proceeded with as laid down by this Court. Therefore, the limitation also does not stand as an impediment as provided in the proviso to Section 11-A of the Act. Equally, even if there is an irregularity in service of notice under Sections 9 and 10, it would be a curable irregularity and on account thereof, award made under Section 11 does not become invalid. Award is only an offer on behalf of the State. If compensation was accepted without protest, it binds such party but subject to Section 28-A. Possession of the acquired land would be taken only by way of a memorandum, Panchnama, which is a legally accepted norm. It would not be possible to take any physical possession. Therefore, subsequent continuation, if any, had by the erstwhile owner is only illegal or unlawful possession which does not bind the Government nor vested under Section 16 divested in the illegal occupant. Considered from this perspective, we hold that the High Court was not justified in interfering with the award."

(ii) (State of H.P. vs. Tarsem Singh and others) 2001 8 SCC 104 wherein the Honourable Supreme Court held in para-7 thus:-

" 7. In the aforesaid two cases, Entry 21 of List II of the Seventh Schedule of the Government of India Act and Entry 18 of List II of the Seventh Schedule of the Constitution of India were relied upon for the purpose of holding that there was a legislative competence while enacting the Land Acts. The question whether vesting of all interests and rights in the land free from all encumbrances would also include easementary right, was not the subject-matter of decisions and, therefore, the said decisions have no application in the present case. Section 3 of the Act provides that,

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notwithstanding any custom, usage, instrument, agreement or decree of the court, all titles, interests and rights in the land shall stand extinguished and all such rights, title and interests shall vest in the State free from all encumbrances. Learned counsel, when argued that easementary right being over the land has not vested in the State, omitted to consider the significance of the expression "free from encumbrances". The word "encumbrance" means a burden or charge upon property or a claim or lien upon an estate or on the land. "Encumber" means burden of legal liability on property, and, therefore, when there is encumbrance on a land, it constitutes a burden on the title which diminishes the value of the land. In Abdul Karim Khan v. Managing Committee, George High School it was held that encumbrance would include easementary right of drainage over the land. In Rashid Allidina v. Jiwandas Khemji it was laid down that the word "encumbrance" has always been understood to include easementary right. In Ganga Vishnu Swaika v. Machine Mfg. Co. Ltd. it was ruled that an easementary right to discharge water on other's land comes within the meaning of encumbrance on the right in the land. "

8. As mentioned above, some of the petitioners, for the first time filed writ petitions challenging the eviction order, such writ petitions also not maintainable. It is well settled that once award is passed, no writ petition can be filed challenging the acquisition proceedings or any proceedings thereunder. Followed (Municipal Council, Ahmednagar v. Shah Hyder Beig, (2000) 2 SCC 48, in Para No.17, it was held thus:-

17. In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of the recent cases (C. Padma v. Dy. Secy. to the Govt. of T.N) this Court observed as below: (SCC p. 628, para 4)

" 4 . The admitted position is that pursuant to the notification published under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') in GOR No. 1392 Industries dated 17-10-1962, total extent of 6 acres 41 cents of land in Madhavaram Village, Saidapet Taluk, Chengalpattu District in Tamil Nadu was acquired under Chapter VII of the Act for the manufacture of Synthetic Rasina by

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Tvl. Reichold Chemicals India Ltd., Madras. The acquisition proceedings had become final and possession of the land was taken on 30-4-1964. Pursuant to the agreement executed by the company, it was handed over to Tvl. Simpson and General Finance Co. which is a subsidiary of Reichold Chemicals India Ltd. It would appear that at a request made by the said company, 66 cents of land out of one acre 37 cents in respect of which the appellants originally had ownership, was transferred in GOMs No. 816 Industries dated 24-3-1971 in favour of another subsidiary company. Shri Rama Vilas Service Ltd., the 5th respondent which is also another subsidiary of the Company had requested for two acres 75 cents of land; the same came to be assigned on leasehold basis by the Government after resumption in terms of the agreement in GO Ms No. 439 Industries dated 10-5-1985. In GO Ms No. 546 Industries dated 30-3-1986, the same came to be approved of. Then the appellants challenged the original GO Ms No. 1392 Industries dated 17-10-1962 contending that since the original purpose for which the land was acquired had ceased to be in operation, the appellants are entitled to restitution of the possession taken from them. The learned Single Judge and the Division Bench have held that the acquired land having already vested in the State, after receipt of the compensation by the predecessor-in-title of the appellants, they have no right to challenge the notification. Thus the writ petition and the writ appeal came to be dismissed."

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9. After acquisition, as mentioned above, the property stood divested from whomsoever it belongs earlier, thereafter, no one can lay any claim to the said acquired land once over as the land ultimately stood over and vested with the Board. Thus, the person in occupation be treated as trespasser, who cannot claim any remedy against the owner nor can the court issue the same. Followed Tamil Nadu Housing Board v. A. Viswam, (1996) 8 SCC 259 wherein in Para-12, it was stated thus:-

" 12. Thus considered, the title of the land in Survey No. 140/4 having been vested in the appellant, to whomsoever it belonged earlier, it stood divested from him/them and no one can lay any claim to the said acquired land once over and claim injunction on that basis.

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> The injunction, therefore, cannot be issued against the true owner, namely, the Housing Board in whom the land ultimately stood vested and then stood transferred to the Municipal Corporation. A trespasser cannot claim injunction against the owner nor can the court issue the same. "

10. In view of the said fact, the properties covered in these writ petitions are vested with the Board and all rights, title and interest, including the easementary rights of the owners and occupiers stood extinguished and all such right, title and interest vest in the Board free from all encumbrances as held by the Honourable Supreme Court in the decisions mentioned supra.

11. For the said reasons, all the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

12. The learned counsel appearing for the petitioners submitted that the petitioners are in occupation of the said lands for a substantial period, hence, sufficient time may be granted to them to remove their belongings and to deliver vacant possession. Considering the same, time of six months is granted from today to enable the petitioners to deliver vacant possession of the property to the respondents provided they submit an affidavit of undertaking to that effect to the respondents within a period of one week from the date of receipt of this order. If such affidavits of undertaking are not filed within the time stipulated above, it is open to the Board to initiate eviction forthwith without waiting for the said period of six months.

13. The petitioners submitted that after construction in the said lands are over and in the event of selling the constructed portion under any of the scheme of the respondents or the Board decided to sell the lands without construction, they may be considered on priority basis. Such relief cannot be given since allotments can be made only through lot or by public auction, however, any representation is received for allotment of land or building from the petitioners, it is for the Board to consider it on merits and pass orders in accordance with law.

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Sub Asst. Registrar.

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To

1. The Chairman
   Tamil Nadu Housing Board
   Nandanam
   Chennai - 600 035

2. The Executive Engineer
   Anna Nagar Division
   Tamil Nadu Housing Board
   Chennai - 600 040

1 cc to Mr.R. Girirajan, Advocate, Sr. 66371
2 ccs to Mr.s. Rajendran, Advocate, Sr. 66185, 66186

W.P. Nos. 27186 to 27190, 27195 to 27199, 27202, 27232, 27426, 27456, 28280, 27334, 27355, 27389, 26927 & 26928 of 2007

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